

## CHAPTER 2023-287

### Committee Substitute for Committee Substitute for House Bill No. 1119

An act relating to withholding or withdrawal of life-prolonging procedures; amending s. 744.3115, F.S.; revising when a court may modify or revoke certain authority of a surrogate; requiring a hearing before the court can modify or revoke authority of a surrogate; requiring a guardian to file an advance directive for health care with the court within a specified timeframe under certain circumstances; requiring the court to make certain findings; authorizing a surrogate or agent to make health care decisions without order of the court under certain circumstances; amending s. 744.3215, F.S.; revising the rights that may be removed from a person by an order determining incapacity; requiring court approval to withhold or withdraw life-prolonging procedures of incapacitated persons in certain circumstances; amending ss. 744.363 and 744.3675, F.S.; making technical changes; requiring initial and annual guardianship plans, respectively, to state whether any power under the ward's preexisting order not to resuscitate or advance directive is revoked, modified, or suspended; requiring such plans to state the dates of such action; creating s. 744.4431, F.S.; requiring court approval for decisions to withhold or withdraw life-prolonging procedures or to execute an order not to resuscitate; specifying requirements for a petition for court approval to consent to withhold or withdraw life-prolonging procedures or to execute an order not to resuscitate; requiring the professional guardian to prove certain facts by clear and convincing evidence; requiring the professional guardian to serve certain notices; requiring the court to hold a hearing if certain circumstances exist; specifying procedures that must be followed by the court in acting on the petition; providing exceptions to the requirement for court approval; requiring the professional guardian to provide certain written notice to the court within a specified timeframe; amending s. 744.441, F.S.; making technical changes; deleting provisions regarding the authority of certain guardians to sign an order not to resuscitate; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 744.3115, Florida Statutes, is amended to read:

744.3115 Advance directives for health care.—In each proceeding in which a guardian is appointed under this chapter, the court shall determine whether the ward, prior to incapacity, has executed any valid advance directive under chapter 765.

(1) For purposes of this section, the term “health care decision” has the same meaning as in s. 765.101.

(2) If any advance directive exists, the court shall specify in its order and letters of guardianship what authority, if any, the guardian shall exercise over the ward with regard to health care decisions and what authority, if any, the surrogate shall continue to exercise over the ward with regard to health care decisions.

(3) Pursuant to the grounds listed in s. 765.105, or if the surrogate is unwilling or unable to act, the court may, upon motion from any interested person or upon its own motion, may, with notice to the surrogate; next of kin, if known; and any other interested persons as the court may direct appropriate parties, modify, or revoke the authority of the surrogate to make health care decisions for the ward. Any order revoking or modifying the authority of the surrogate must be supported by specific written findings of fact after a hearing on the motion.

(4) If ~~a the~~ court order provides that ~~a the~~ guardian is responsible for making health care decisions for the ward, the guardian shall assume the responsibilities of the surrogate which are provided in s. 765.205. ~~For purposes of this section, the term “health care decision” has the same meaning as in s. 765.101.~~

(5) If a guardian discovers an advance directive for health care for the ward after the guardian is appointed, the guardian must file the advance directive with the court as soon after its discovery as is reasonable, but no later than the due date for the initial guardianship report or the annual guardianship plan or the filing date for a petition seeking to exercise authority regarding life-prolonging procedures in compliance with s. 744.4431, whichever is earlier. After the guardian files an advance directive for health care, the court must determine if the advance directive is an alternative to guardianship and what authority, if any, the guardian will exercise over health care decisions for the ward pursuant to subsections (3) and (4).

(6) Upon a finding by the court that a health care surrogate designation or a durable power of attorney is an alternative to guardianship for health care decisions, the surrogate or agent may exercise the right to make health care decisions for the ward under the applicable advance directive or durable power of attorney without order of the court even if the surrogate or agent has been appointed as guardian of the ward for other delegable rights.

Section 2. Paragraph (f) of subsection (3) of section 744.3215, Florida Statutes, is amended to read:

744.3215 Rights of persons determined incapacitated.—

(3) Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:

(f) To make health care decisions as defined in s. 765.101. If this right is removed from a person, then court approval for the withdrawal or

withholding of life-prolonging procedures, as defined in s. 765.101, is required under s. 744.4431 consent to medical and mental health treatment.

Section 3. Paragraph (f) of subsection (1) of section 744.363, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

744.363 Initial guardianship plan.—

(1) The initial guardianship plan shall include all of the following:

(f)1. A list of any preexisting:

a. Orders not to resuscitate executed in accordance with under s. 401.45(3) and the dates such orders were signed; or

b. Preexisting Advance directives, as defined in s. 765.101 and, the dates such directives were signed. date an order or directive was signed,

2. For each item listed under subparagraph 1., the plan must state whether the such order or directive has been revoked, modified, or suspended by the court.

(g) ~~;~~and A description of the steps taken to identify and locate a the preexisting order not to resuscitate or advance directive.

Section 4. Paragraph (d) of subsection (1) of section 744.3675, Florida Statutes, is amended, and paragraph (e) is added to that subsection, to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(d) 1. A list of any preexisting:

a. Orders not to resuscitate executed in accordance with under s. 401.45(3) and the dates such orders were signed; or

b. Preexisting Advance directives, as defined in s. 765.101 and, the dates such directives were signed. date an order or directive was signed,

2. For each item listed under subparagraph 1., the plan must state whether the such order or directive has been revoked, modified, or suspended by the court.

(e) ~~;~~and A description of the steps taken to identify and locate a the preexisting order not to resuscitate or advance directive.

Section 5. Section 744.4431, Florida Statutes, is created to read:

744.4431 Guardianship power regarding life-prolonging procedures.—

(1) Except as provided in this section, decisions by a professional guardian, as defined in s. 744.102, to withhold or withdraw life-prolonging procedures from, or to execute an order not to resuscitate for, a ward must be approved by the court. A professional guardian appointed to act on behalf of a ward's person must petition the court pursuant to the Florida Probate Rules for authority to consent to withhold or withdraw life-prolonging procedures or to execute an order not to resuscitate before taking such action, except as provided in subsection (7).

(2) The petition by a professional guardian must contain all of the following:

(a) A description of the proposed action or decision for which court approval is sought and documentation of the authority of the professional guardian to make health care decisions on behalf of the ward.

(b) A statement regarding any known objections to the relief sought in the petition.

(c) A description of the ward's known wishes, including all advance directives executed by the ward, or, if there is no indication of the ward's wishes, a description of why the relief sought is in the best interests of the ward.

(d) Any exigent circumstances that exist which necessitate immediate relief.

(e) A description of the circumstances requiring the proposed action or decision and evidence, including affidavits, medical records, or other supporting documentation, showing that the proposed action or decision satisfies the criteria in s. 765.305, s. 765.401(3), or s. 765.404, as applicable.

(3) A professional guardian must show by clear and convincing evidence that the proposed action or decision he or she is requesting would have been the decision the ward would have chosen if the ward had capacity or, if there is no indication of what the ward would have chosen, that the proposed action or decision is in the best interests of the ward.

(4) A professional guardian must serve notice of the petition, and of any hearing, on the ward; the ward's attorney, if any; the ward's next of kin, if known; and any other interested persons as the court may direct, unless such requirement is waived by the court.

(5) The court must hold a hearing on the petition if:

(a) The ward or the ward's attorney objects to the petition;

(b) The ward's next of kin or an interested person objects on any basis under s. 765.105(1);

(c) The professional guardian, the ward, or the ward’s attorney requests a hearing; or

(d) The court has insufficient information to determine whether the criteria for granting the petition has been met.

(6) If a hearing is required and exigent circumstances are alleged, the court must hold a preliminary hearing within 72 hours after the petition is filed and do one of the following:

(a) Rule on the relief requested immediately after the preliminary hearing; or

(b) Conduct an evidentiary hearing within 4 days after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.

(7) Court approval is not required for the following decisions:

(a) A decision to withhold or withdraw life-prolonging procedures made by a professional guardian to whom authority has been granted by the court under s. 744.3115 to carry out the instructions in or to take actions consistent with the ward’s advance directive, as long as there are no known objections from the ward; the ward’s attorney; the ward’s next of kin, if known; and any other interested persons as the court may direct based on s. 765.105(1).

(b) A decision by a professional guardian who has been delegated health care decision-making authority to execute an order not to resuscitate, as described in s. 401.45(3)(a), if the ward is in a hospital and the following conditions are met:

1. The ward’s primary treating physician and at least one other consulting physician document in the ward’s medical record that:

a. There is no reasonable medical probability for recovery from or a cure of the ward’s underlying medical condition;

b. The ward is in an end-stage condition, a terminal condition, or a persistent vegetative state as those terms are defined in s. 765.101, and that the ward’s death is imminent; and

c. Resuscitation will cause the ward physical harm or additional pain.

2. The professional guardian has notified the ward’s next of kin, if known, and any interested persons as the court may direct and the decision is not contrary to the ward’s expressed wishes and there are no known objections from the ward; the ward’s attorney; the ward’s next of kin, if known; or any other interested persons as the court may direct on the basis of s. 765.105(1).

(8) Within 2 business days after executing an order not to resuscitate under paragraph (7)(b), a professional guardian must notify the court in writing of all of the following:

(a) The date the order not to resuscitate was executed.

(b) The location of the ward when the order not to resuscitate was executed.

(c) The names of the physicians who documented the ward's condition in the ward's medical record.

Section 6. Section 744.441, Florida Statutes, is amended to read:

744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act,:

(1) a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may do all of the following:

(1)(a) Perform, compromise, or refuse performance of a ward's contracts that continue as obligations of the estate, as he or she may determine under the circumstances.

(2)(b) Execute, exercise, or release any powers as trustee, personal representative, custodian for minors, conservator, or donee of any power of appointment or other power that the ward might have lawfully exercised, consummated, or executed if not incapacitated, if the best interest of the ward requires such execution, exercise, or release.

(3)(c) Make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish any improvements; or raze existing, or erect new, party walls or buildings.

(4)(d) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; or dedicate easements to public use without consideration.

(5)(e) Enter into a lease as lessor or lessee for any purpose, with or without option to purchase or renew, for a term within, or extending beyond, the period of guardianship.

(6)(f) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

~~(7)(g)~~ Abandon property when, in the opinion of the guardian, it is valueless or is so encumbered or in such condition that it is of no benefit to the estate.

~~(8)(h)~~ Pay calls, assessments, and other sums chargeable or accruing against, or on account of, securities.

~~(9)(i)~~ Borrow money, with or without security, to be repaid from the property or otherwise and advance money for the protection of the estate.

~~(10)(j)~~ Effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate.

~~(11)(k)~~ Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties. Before authorizing a guardian to bring an action described in s. 736.0207, the court shall first find that the action appears to be in the ward's best interests during the ward's probable lifetime. There shall be a rebuttable presumption that an action challenging the ward's revocation of all or part of a trust is not in the ward's best interests if the revocation relates solely to a devise. This subsection ~~paragraph~~ does not preclude a challenge after the ward's death. If the court denies a request that a guardian be authorized to bring an action described in s. 736.0207, the court ~~must~~ shall review the continued need for a guardian and the extent of the need for delegation of the ward's rights.

~~(12)(l)~~ Sell, mortgage, or lease any real or personal property of the estate, including homestead property, or any interest therein for cash or credit, or for part cash and part credit, and with or without security for unpaid balances.

~~(13)(m)~~ Continue any unincorporated business or venture in which the ward was engaged.

~~(14)(n)~~ Purchase the entire fee simple title to real estate in this state in which the guardian has no interest, but the purchase may be made only for a home for the ward, to protect the home of the ward or the ward's interest, or as a home for the ward's dependent family. If the ward is a married person and the home of the ward or of the dependent family of the ward is owned by the ward and spouse as an estate by the entirety and the home is sold pursuant to the authority of subsection (12) paragraph (l), the court may authorize the investment of any part or all of the proceeds from the sale toward the purchase of a fee simple title to real estate in this state for a home for the ward or the dependent family of the ward as an estate by the entirety owned by the ward and spouse. If the guardian is authorized to acquire title to real estate for the ward or dependent family of the ward as an estate by the entirety in accordance with the preceding provisions, the conveyance must ~~shall~~ be in the name of the ward and spouse and shall be effective to create an estate by the entirety in the ward and spouse.

(15)(~~o~~) Exercise any option contained in any policy of insurance payable to, or inuring to the benefit of, the ward.

(16)(~~p~~) Pay reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate.

(17)(~~q~~) Make gifts of the ward's property to members of the ward's family in estate and income tax planning procedures.

(18)(~~r~~) When the ward's will evinces an objective to obtain a United States estate tax charitable deduction by use of a split interest trust (as that term is defined in s. 736.1201), but the maximum charitable deduction otherwise allowable will not be achieved in whole or in part, execute a codicil on the ward's behalf amending said will to obtain the maximum charitable deduction allowable without diminishing the aggregate value of the benefits of any beneficiary under such will.

(19)(~~s~~) Create or amend revocable trusts or create irrevocable trusts of property of the ward's estate which may extend beyond the disability or life of the ward in connection with estate, gift, income, or other tax planning or in connection with estate planning. The court shall retain oversight of the assets transferred to a trust, unless otherwise ordered by the court.

(20)(~~t~~) Renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

(21)(~~u~~) Enter into contracts that are appropriate for, and in the best interest of, the ward.

(22)(~~v~~) As to a minor ward, pay expenses of the ward's support, health, maintenance, and education, if the ward's parents, or either of them, are alive.

~~(2) A plenary guardian or a limited guardian of a ward may sign an order not to resuscitate as provided in s. 401.45(3). When a plenary guardian or a limited guardian of a ward seeks to obtain approval of the court to sign an order not to resuscitate, if required by exigent circumstances, the court must hold a preliminary hearing within 72 hours after the petition is filed, and:~~

~~(a) Rule on the relief requested immediately after the preliminary hearing; or~~

~~(b) Conduct an evidentiary hearing not later than 4 days after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.~~

Section 7. This act shall take effect July 1, 2023.

Approved by the Governor June 23, 2023.

Filed in Office Secretary of State June 23, 2023.